

ONLINE STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

1.1 In this Agreement, the following words and expressions shall have the following meanings unless the context otherwise requires:

“Advertiser”	means the Advertiser specified in the Insertion Order;
“Affiliate”	means in relation to any body corporate, any Holding Company or Subsidiary of such body corporate or any Subsidiary of a Holding Company of such body corporate;
“Agency”	means the media buying agency (if there is one) acting on behalf of the Advertiser, as specified in the Insertion Order;
“Agreement”	means these Standard Terms and Conditions and the Insertion Order;
“Campaign”	means the campaign specified in the Insertion Order;
“Campaign End Date”	means the end date specified in the Insertion Order for the Campaign;
“Campaign Start Date”	means the start date specified in the Insertion Order for the Campaign;
“Client”	means either (a) the Agency acting on behalf of the Advertiser; or (b) where there is no Agency, the Advertiser;
“Creative”	means the advertising material for the Campaign, provided to Sky and as set out in the Insertion Order;
“Holding Company”	means a holding company within the meaning ascribed to such expression by section 1159 of the Companies Act 2006;
“Impressions”	means each time a User accesses a page on a Website that displays the Creative regardless of whether or not the User is required to scroll to view the Creative;
“Net Fee”	means the net fee specified in the Insertion Order;
“Referrals”	means any User that has visited the Website and clicked through to the Advertiser's Website directly from the Creative;
“Sky”	means Sky UK Limited and includes any Affiliate of Sky UK Limited;
“Standard Terms and Conditions”	means these standard terms and conditions;
“Subsidiary”	means a subsidiary within the meaning ascribed to such expression in section 1159 of the Companies Act 2006;
“User”	means any person visiting the Website;

“Virus” means any computer code, programming instruction or set of instructions that is intentionally and specifically constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or hardware; and

“Website” means the website set out in the Insertion Order (which may be a mobile internet website) or any other replacement website agreed between the parties during the Campaign.

2. AGREEMENT

2.1 These Standard Terms and Conditions shall apply to all advertising purchased by a Client and together with Sky's Insertion Order shall constitute the Agreement made between Sky and the Client in relation to the Campaign.

2.2 Where the Client is an Agency, the Agency warrants that:

2.2.1 it contracts with Sky as principal notwithstanding that it may be acting as an advertising agency or media buyer or in some other representative capacity; and

2.2.2 it is authorised to represent and bind the Advertiser(s) named in the Insertion Order; and

2.2.3 the Advertiser(s) agree to be jointly and severally bound by this Agreement as if it was the Client.

3. PLACEMENT OF CREATIVE

3.1 The Client must sign a completed Insertion Order and return it to Sky before the Creative will be published on the relevant Website(s).

3.2 Subject to clauses 9, 11, and 12, Sky agrees that it will place the Creative specified in an agreed Insertion Order in the manner set out in the Insertion Order.

4. PROVISION OF CREATIVE

4.1 The Creative for a Campaign shall be provided by or on behalf of the Client to Sky as follows:

4.1.1 The Creative and the associated codes as required by Sky shall be e-mailed to OnlineTraffic@bskyb.com.

4.1.2 The Creative must be received by Sky at least three (3) working days or, in the case of rich media, five (5) working days prior to the Campaign Start Date. Sky shall not be liable for failure to comply with the Campaign Start Date if the necessary creative is not received by Sky in times specified in the Insertion Order or as otherwise required by Sky.

4.1.3 FLASH banners must include a Macromedia ClickTag and be sent with a replacement creative for those Users who do not have the relevant plug-ins.

4.1.4 The Creative must also comply with any additional technical requirements set out at www.skydigitalmedia.co.uk.

5. IMPRESSIONS

5.1 Save as otherwise provided in this Agreement, the Advertiser and the Agency (if any) acknowledges that Sky has not made any guarantees with respect to usage statistics, levels of Impressions or Referrals for any Campaign. Sky provides the Client with estimated usage

statistics only as a courtesy to the Client and Sky will not be held liable (in negligence or otherwise) for any claims relating to any usage statistics however supplied.

- 5.2 The Advertiser and the Agency (if any) acknowledges that delivery statistics provided by Sky are the official, definitive measurements of Sky's performance on delivery obligations, if any, provided in this Agreement. No other measurements or usage statistics (including those of the Client or any other person's ad server) will be accepted by Sky or have bearing on this Agreement.

6. POSITIONING AND LICENCE

- 6.1 The Advertiser and (if appropriate) the Agency hereby grants to Sky a worldwide, non-exclusive, royalty-free licence to reproduce and display the Creative (including all contents, trade marks and brand features contained therein) in accordance with this Agreement.
- 6.2 Except as otherwise expressly provided in this Agreement, positioning of Creative within the Website or on any page therein is at the sole discretion of Sky, and Sky will not be prohibited from also carrying advertisements for any product or business competitive to the product or business of the Advertiser. Sky does not warrant the date or dates of insertion of the Creative(s) and does not warrant that the Creative(s) will not be displayed after the Campaign End Date specified. However, Sky will use reasonable efforts to comply with the Client's wishes in these regards.
- 6.3 The Advertiser and (if appropriate) the Agency grants to Sky the express right to reproduce throughout the world screen shots of all or part of the Website containing all or part of any of the Creative supplied by the Client to Sky on or in any promotional or advertising material or campaign promoting or advertising the Website.

7. CLIENT'S WARRANTIES, REPRESENTATIONS AND INDEMNIFICATION

- 7.1 The Client warrants and represents to Sky that:
- 7.1.1 it holds all necessary rights to permit the use, reproduction, display, transmission and distribution of the Creative on the Websites (the "**Use**"), and can grant to Sky such rights (which, for the avoidance of doubt, in the event that any Creative contains a sound recording (the "**Recording**"), shall include but not be limited to all consents and permissions from: (i) the copyright owners of the musical and/or literary composition(s) reproduced on the Recording; and (ii) labour organisations including the Musicians' Union for which the Client shall pay all re-use payments, royalties and other sums required for such consents and permissions), and
- 7.1.2 the Use shall not:
- (A) infringe any rights of any person including, without limitation, intellectual property rights and rights of privacy; or
 - (B) violate any applicable law or regulation; or
 - (C) contain anything that is defamatory, obscene, false or misleading;
- 7.1.3 it has complied with the codes of practice issued by the Committee of Advertising Practice in the UK and the Advertising Standards Authority for Ireland in respect of electronic and online advertising and all other relevant industry codes of practice;
- 7.1.4 without limiting the generality of the above clause 7.1.27.1.2(B), the Creative submitted pursuant to this Agreement either:
- (A) does not constitute a financial promotion within the meaning of the Financial Services and Markets Act 2000 ("**Act**") or other applicable law; or

(B) has been approved by an 'authorised person' within the meaning of the Act and/or is otherwise permitted under the Act or an exemption order thereto and the Client has expressly notified Sky in writing of this;

7.1.5 the Creative shall be free of any defects and/or Viruses, and shall not affect the operation of the Websites.

7.2 The Client agrees to indemnify and keep indemnified Sky, its Affiliates, officers and employees and hold Sky, its Affiliates, officers and employees harmless against any and all liabilities, costs, expenses, damages and losses of any kind (including legal fees and costs) incurred by Sky, its Affiliates, officers and/or employees and/or the Website owner and/or operator as a result of:

7.2.1 any claims actual or threatened, of any kind (including but not limited to any claim of trademark or copyright infringement, libel, defamation, breach of confidentiality, breach of any statutory or regulatory duty, false or misleading advertising or sales practices) arising from the Creative and/or any material (of the Advertiser or otherwise) to which Users can link through the Creative; and/or

7.2.2 a breach of any provision of this Agreement by the Client.

8. TERMS OF PAYMENT

8.1 Unless otherwise expressly agreed by the parties in writing, the Client will be invoiced for the Net Fee at the end of the first calendar month after the Campaign Start Date and the Client must ensure that payment is made to Sky in pounds sterling within thirty (30) days after the date of the invoice.

8.2 The Client must pay the Net Fee and VAT at the relevant rates prescribed by law (and all similar sales tax (if applicable)). All amounts paid by the Client after the due date will bear interest at the rate of two percent (2%) (or the highest rate permitted by law, if less) above the base lending rate of Barclays Bank plc, from time to time, from the date when payment was due until the date of payment is received, whether before or after judgment. In the event of any failure by the Client to make payment, the Client will be responsible for all expenses (including legal fees on an indemnity basis) incurred by Sky in collecting the amounts due.

8.3 The Client understands that once this Agreement is executed there shall be no refunds or suspension of payments even if the Client wishes to discontinue display of the Creative prior to expiration of the Campaign (unless Sky agrees otherwise at its sole discretion).

8.4 Where Creative is received by Sky later than midday on the business day prior to the Campaign Start Date, the number of Impressions delivered or to be delivered (as set out in the Insertion Order) will be reduced on a pro-rata basis for each day that the Creative is late (and if the Campaign Start Date is missed, the Creative must be delivered on the business day prior to the revised publication date). For example, if Creative is delivered at 10am on the Campaign Start Date, it shall be considered to be 2 days late, however if the Creative is delivered at 10am on the Campaign Start Date and the Campaign Start Date is a Monday, then the Creative shall be considered to be 4 days late.

8.5 The pro-rata reduction will be calculated as follows:

$$A=Z (Y/X)$$

Where:

A = the reduction in total number of Impressions to be delivered;

X = total number of days of the campaign;

Y = original number of Impressions delivered/to be delivered (as specified in the Insertion Order); and

Z = number of days Creative is received late

e.g. where Creative is received at 4pm on the day prior to the Start Date (and the Start Date was a Wednesday) where the campaign is 20 days long and the original number of Impressions delivered or to be delivered is 20,000, the pro-rata reduction will be as follows:

$$A = 1 \times 20,000/20$$

$$A = 1000$$

meaning that the number of Impressions to be delivered is 20,000 - 1000 = 19,000 Impressions.

NB the figures used in the example above are for illustration purposes only.

9. NO ASSIGNMENT OR RE-SALE OF AD SPACE

- 9.1 The Advertiser and (if appropriate) the Agency may not re-sell, assign or transfer any of its rights hereunder, and any attempt to re-sell, assign or transfer such rights will entitle Sky to terminate this Agreement immediately, without liability on the part of Sky.
- 9.2 Sky shall be entitled to assign any of its rights and obligations hereunder to any other person.

10. LIMITATION OF LIABILITY

- 10.1 If Sky fails to publish any Creative for any reason whatsoever or deliver any guaranteed Impressions or Referrals as provided in the Insertion Order (or in the event of any other failure, technical or otherwise, of such Creative appearing as provided in this Agreement), Sky's liability will be limited (at the option of Sky) to either:
- 10.1.1 publishing the Creative as soon as is reasonably practicable in the period following the period during which the Creative was scheduled to run on the Website or an alternative website and for such time as is necessary to generate a number of substitute Impressions or Referrals equal to the shortfall; or
- 10.1.2 refund to the Client that proportion of the Net Fee which relates to that Creative and/or Impressions or Referrals which were not provided or, if the relevant amounts were not paid by or on behalf of the Client, agree that such amounts will not be due or payable.
- 10.2 In no event will Sky be liable to the Advertiser or the Agency (if any) for any direct or indirect economic loss of any kind including (without limitation) loss of profits, business, contracts, revenues, goodwill, production and anticipated savings arising from any failure to publish in a timely manner or at all any Creative in accordance with this Agreement or any other breach by Sky of the terms of this Agreement.
- 10.3 In no circumstance shall Sky be liable for any error in the Creative whatsoever whether through its own act or omission (whether negligent or otherwise) or through the incorrect presentation or codes for the Creative or otherwise and the Client hereby indemnifies Sky in respect of any claim, loss, damage or otherwise arising out of any error or omission in the Creative.
- 10.4 Without prejudice to the provisions of clauses 10.1 to 10.3 inclusive, in the event that Sky is held liable for damages or losses suffered by the Agency (if any) or the Advertiser, the maximum liability that Sky shall have towards the Agency (if any) and the Advertiser in respect of any act or omission and any related series of acts or omissions shall be the Net Fee paid to Sky by the Advertiser and the Agency on its behalf under this Agreement.

- 10.5 Sky will have no liability for any failure or delay (whether negligent or otherwise) in performing any obligation hereunder resulting from any governmental action, fire, flood, insurrection, earthquake, power failure, technical failure, riot, explosion, embargo, strikes whether legal or illegal, labour or material shortage, transportation interruption of any kind, work slowdown or any other condition beyond the control of Sky affecting production or delivery in any manner. For the avoidance of doubt, any downtime of the Website for regular maintenance, upgrade or otherwise shall not constitute a breach of any obligation under this Agreement.
- 10.6 Notwithstanding any other provision of this Agreement, Sky does not limit or exclude liability for death or personal injury caused by its negligence or fraudulent misrepresentation.
- 10.7 Each of the provisions of this clause 10 are to be construed separately and independently of the other and, if any provision of this clause 10 or any other clause in this Agreement is found by any court or other judicial body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision will not affect the other provisions of this clause 10 or any other clause herein which will remain in full force and effect.

11. RIGHT TO REJECT CREATIVE

- 11.1 All contents of Creative are subject to Sky's approval. Sky does not undertake to review the contents of any Creative and any such review of and/or approval by Sky will not be deemed to constitute an acceptance by Sky that such Creative is provided in accordance with this Agreement, nor will it constitute a waiver of Sky's rights hereunder. Sky reserves the right at any time in its absolute discretion to:
- 11.1.1 reject or cancel any Creative, space reservation or position commitment; or
 - 11.1.2 remove any Creative from the Website or any page.
- 11.2 The specific positioning of the Creative shall be as determined by Sky. Sky reserves the right to redesign or modify the organisation, navigation, structure, "look and feel" and other elements of the Websites at its sole discretion at any time without prior notice.

12. TERM AND RENEWAL

- 12.1 The term of the Agreement shall commence when the Insertion Order has been signed by both parties, or the date Sky commences publishing the Creative (whichever is the earlier) and this Agreement shall continue in force and effect until the Campaign End Date unless terminated earlier pursuant to this clause 12 of the Agreement. Except as expressly set out in this Agreement, any renewal of this Agreement and acceptance of any additional advertising order will be at Sky's sole discretion. The rates applicable to such renewal period (if any) are subject to change by Sky from time to time in its absolute discretion.
- 12.2 Without prejudice to its other rights and remedies Sky shall be entitled to terminate this Agreement in whole or in part forthwith at any time by giving notice in writing to the Client if:
- 12.2.1 the Advertiser and/or the Agency (if any) fails to observe or perform any of its obligations hereunder and, where such failure is capable of remedy, does not remedy such failure within 7 days after being served notice to do so; or
 - 12.2.2 the Advertiser and/or the Agency (if any) becomes insolvent, a person passes a resolution for either of their winding up or dissolution, an administration order is made against either of them or a receiver is appointed over, or takes possession of, the assets of the Advertiser and/or the Agency (if any).
- 12.3 In the event that this Agreement is terminated pursuant to this clause 12, then without prejudice to its rights and remedies, Sky shall be under no obligation to publish the Creative or to refund any Net Fee or other amounts paid by or on behalf of the Client to Sky in respect of such Creative.

- 12.4 Termination or expiry of this Agreement and of any Insertion Order in whole or in part shall not affect any rights of any party in respect of any antecedent breach of this Agreement by any other party, nor shall it affect any accrued rights or liabilities (or the coming into force of any accrued rights or liabilities) of any party.
- 12.5 Once an Insertion Order is signed by both parties, neither the Advertiser nor the Agency (if any) shall terminate this Agreement for any reason unless expressly provided for in the Insertion Order or unless agreed to in writing by Sky, at its exclusive option.
- 12.6 Upon termination of this Agreement for any reason:
- 12.6.1 the Client shall remain liable for any amount due under an Insertion Order for Creatives displayed by Sky and such an obligation to pay shall survive the termination of this Agreement;
- 12.6.2 at the request of Sky, the Client shall return all of Sky's statistics provided under this Agreement.
- 12.7 The provisions of those clauses intended to have continuing effect (including but not limited to clauses 6, 9, 10, 12 and 13) shall continue in full force and effect following the termination for any reason or expiry of this Agreement.

13. CONFIDENTIALITY AND PUBLIC ANNOUNCEMENTS

- 13.1 The provisions of this Agreement and all communications passing between the Advertiser, the Agency (if any) and Sky are confidential and must not be disclosed to any person except to the extent necessary to comply with the terms of this Agreement, to the relevant persons legal advisors or accountants, or as otherwise agreed between the parties in writing.
- 13.2 The Advertiser and the Agency (if any) is hereby notified that Sky and its associates are particularly sensitive to public statements about Sky and/or the Websites, their contractual relationships and product plans, and improper or ill-timed statements are likely to have a detrimental effect on the business of Sky and its associates and may contravene applicable law. Consequently, the Advertiser and the Agency (if any) shall not, and shall ensure that any person acting on its behalf does not, make any public announcement in respect of this Agreement or the relationship between the parties without the prior written consent of Sky including any pre-announcement in respect of any Campaign on a Website. For the avoidance of doubt, the foregoing prohibition includes public announcements by any person acting on behalf of the Advertiser and the Agency (if any) and any communication, which they know, will or is likely to be made public. Any breach of this clause 13.2 by the Advertiser or the Agency (if any) will be deemed to be a breach of confidentiality undertaking as set out in clause 13.1.

14. MISCELLANEOUS

- 14.1 This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all other prior understandings, commitments, agreements and (unless made fraudulently) representations, whether written or oral, between the parties. Further, the Advertiser and the Agency (if any) acknowledges and agrees that it has not relied upon any representation or otherwise of Sky when entering into this Agreement.
- 14.2 No waiver of any breach of this Agreement is effective unless in writing and signed by the parties to this Agreement.
- 14.3 There shall survive the expiry or termination of this Agreement any term of this Agreement which in order to give effect to its provision needs to survive the expiry or termination.
- 14.4 This Agreement shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English courts.